TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1924.

No. [redacted] 58

SOVEREIGN CAMP WOODMEN OF THE WORLD, APPELLANT,

vs.

E. E. O'NEILL, B. F. VAUGHAN & H. BUCK, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

FILED [illegible] 4, [illegible]

(22,691)

(29,601)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 320.

SOVEREIGN CAMP WOODMEN OF THE WORLD, APPELLANT,

vs.

E. E. O'NEILL, B. F. VAUGHAN, R. H. BUCK, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 28, 1923.

[fol. 1] **IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS**

CAPTION

Be it remembered, that at a regular term of the United States District Court in and for the Northern District of Texas, begun and holden at Dallas, Texas, on the 8th day of January, A. D. 1923, and which term is now in session, the Honorable Wm. H. Atwell, United States District Judge for the Northern District of Texas, presiding, the following proceedings were had and the following cause came on for trial and was tried, to-wit:

No. 2955-213. In Equity

SOVEREIGN CAMP WOODMEN OF THE WORLD, Plaintiff,

vs.

E. E. O'NEILL et al., Defendants.

[fol. 2] IN THE DISTRICT COURT OF THE UNITED STATES OF THE NORTHERN DISTRICT OF TEXAS

In Equity. No. —

[Title omitted]

PLAINTIFF'S ORIGINAL BILL OF COMPLAINT—Filed Sept. 1st, 1922

To the Honorable Judge of said Court:

Now comes the Sovereign Camp Woodmen of the World, a corporation, organized and existing under the laws of the State of Nebraska and having its principal place of business at Omaha in said State, plaintiff in this suit, complaining of E. E. O'Neill and B. F. Vaughan, both of whom reside in Hunt County, Texas, of R. H. Buck and of Sterling P. Clark, both of whom reside in Tarrant County, Texas, of Chas. Piller, who resides in Lavaca County, Texas, of T. F. Temple, who resides in Parker County, Texas, of J. H. Sutton, who resides in McLennan County, Texas, of A. H. Armstrong, who resides in Fort Bend County, Texas, of J. H. Hilton, who resides in Eastland County, Texas, of E. D. King, who resides in Bell County, Texas, of Conde R. Hoskins, who resides in Gonzalas County, Texas, of J. S. Jones, who resides in Bastrop County, Texas, of T. D. Lovelady, who resides in El Paso County, Texas, of Max M. Lands, who resides in Maverick County, Texas, of J. H. Foster, who resides in Wise County, Texas, of E. J. Miller, who resides in Brown County, Texas, of E. M. Pevoto, who resides in Jefferson County, Texas, of

Bruce W. Bryant, who resides in Haskell County, Texas, of T. J. Bedell, who resides in Panolo County, Texas, of Arthur Beck, who resides in Bexar County, Texas, of John M. Raiden and H. G. Evans, both of whom reside in Fannin County, Texas, of B. F. Gafford and of J. W. Adamson, both of whom reside in Grayson County, Texas, and of William W. Walters, who resides in Harris County, Texas, herein after called Defendants, and says:

1

This is a suit in which the plaintiff is a resident citizen of the State [fol. 3] of Nebraska, and all of the Defendants are citizens of the State of Texas.

2

The matter in controversy herein exceeds, exclusive of interests and costs, the sum or value of Three Thousand Dollars ($3,000.00).

3

Plaintiff is a fraternal benefit society voluntarily organized without capital stock, organized and carried on solely for the mutual benefit of its members and of their beneficiaries and not for profit, and has a lodge system with ritualistic form of work and representative form of government, and having as its supreme law a Constitution, Laws and By-Laws, voluntarily adopted by its members and binding on all of them, including all of the defendants herein. That said Constitution, Laws and By-Laws are promulgated by the Sovereign Camp Woodmen of the World for the government, control and regulation of itself and of the subordinate bodies or lodges under it known as Head Camps and Local Camps. And that the Constitution, Laws and By-Laws in force during the year 1920 and up to the first day of September, 1921, were those adopted by the Sovereign Camp at its Thirteenth Biennial Session in July 1919.

4

Plaintiff alleges that heretofore on to-wit the 28th day of January, 1922, Defendant R. H. Buck, filed suit in the 67th District Court of Tarrant County, Texas, in cause No. 59208, against this Plaintiff, in which suit he averred substantially as follows: That the Head Camp of the State of Texas Woodmen of the World held a regular meeting in the city of Houston, State of Texas, on to-wit the 8th day of March 1921, for the purpose of transacting its business, which consisted of, among other things, the election of a Head Officer of the State of Texas, styled and denominated Head Consul and occupants [fol. 4] and officers of all other positions provided for in the constitution and by-laws of this Plaintiff, and the selection and election of twenty-nine (29) Delegates and twenty-nine (29) Alternate Delegates to the Sovereign Camp and Convention of this Plaintiff, which had already been called to assemble in the City of New York, on

July 5th, 1921. That under and by virtue of the Constitution and By-Laws of this Plaintiff the member elected as Head Consul for the State of Texas was an ex-officio Delegate to the said Sovereign Camp and entitled to the same benefits, privileges and perquisites as the Delegates chosen thereto. That said R. H. Buck was elected at said convention by a large and overwhelming majority of all votes cast to said position of Head Consul, and that all of the other parties defendant to this suit together with several other parties were elected as Delegates and Alternate Delegates to said Sovereign Camp, and that they were thereby entitled to be declared elected as Delegates, and should and would have been so declared save and except for ceratin alleged fraudulent acts of Head Officers of said Sovereign Camp. That the Sovereign and Head Officers of said Woodmen of the World conspired together to prevent the election of said Buck and other defendants, and that in furtherance of said conspiracy they arranged a secret exchange of the ballot box containing the true votes cast in said election with another box specially prepared by them and containing forged and fraudulent votes. That said Buck and his associates discovered this purpose and attempt, arresting same, and brought both boxes to the aforesaid Camp and demanded that the votes honestly cast in the real ballot box be counted. That said Sovereign and Head Camp Officers and their fellow conspirators thereupon left said convention and pretended to hold another convention in Houston, at which only about one-fifth if the Delegates legally elected to the Head Camp attended. That all of the remaining Delegates remained in the regular convention and elected said [fol. 5] Buck and the other Defendants herein as Delegates to said Sovereign Camp in said city of New York, but notwithstanding such election, said Head Officers of the State of Texas fraudulently certified the Delegates elected by the illegal and minority meeting. That thereafter on to-wit the 5th day of July, 1921, said Sovereign Commander and his fellow conspirators fraudulently recognized and seated the Delegates thus fraudulently elected and refused to seat or to recognize said Buck and the other Defendants to this suit. That under the Constitution, Laws and By-Laws of this Plaintiff Association, those attending such meeting of said Sovereign Camp as Delegates were entitled to receive the sum of Thirty Dollars ($30.00) per day for each and every day consumed from the beginning of the journey of a Delegate until his return to his home, and should be paid all sums paid out by him in railroad and Pullman car fare, and in addition thereto, the sum of twenty cents (20¢) per mile one way from their place of abode to the place where said Sovereign Convention was held. That the time necessarily consumed by said Buck and other Defendants in travelling from their respective homes to said city of New York, was two (2) days and nights, and an equal time in return. That said convention was in session for a period of thirteen (13) days, and therefore, each of said parties was entitled to the sum of Five Hundred and Ten Dollars ($510.00) each. In addition thereto said petition set out the travelling expenses incurred by each of said parties together with the total mileage travelled by him and computed the total sum due

to each of said parties on account of their per diem allowance, expenses and mileage allowance as varying from approximately Nine Hundred and Eighty-seven Dollars ($987.00) to Eleven Hundred and Seventy Dollars ($1,170.00). That said Buck in said petition asserted that each and all of the other parties defendant herein had for a valuable consideration assigned, transferred and conveyed their claims for said sums of money above set out to him, but that De- [fol. 6] fendant refused to pay him to his damage in the sum of Twenty-eight Thousand Eight Hundred and Eighty-two Dollars ($28,882.00).

5

That citation in said suit was duly served on this Plaintiff on to-wit the — day of ——, 1922, and that this Plaintiff then prepared its petition and bond for the removal of said suit to this Court, and duly served notice, according to law, of its intention to file said petition and bond for removal on said Buck on to-wit the 6th day of March, 1922. That pursuant to said notice on to-wit the 7th day of March, 1922, this Plaintiff filed its petition for removal, but that said Buck had already and prior to such filing of said petition for removal, secured leave of Court to amend and had amended his original petition in said cause by striking out his allegations that the claims of said other parties had been assigned to him and cutting down his said suit to a suit for the sum which he alleged to be due him individually, to-wit, One Thousand and Twenty-two Dollars ($1,022.00).

6

That several months thereafter, to-wit on or about the 20th day of June, 1922, each of the said defendants named herein and all of whom are the parties named in said original suit, filed by said Buck against this Plaintiff in said 67th District Court, as having assigned their claims to him, filed an individual suit against this Plaintiff, each of said parties being represented in his individual suit by the same attorneys, Messrs. Capps, Canty, Hanger & Short, of Fort Worth, Texas, who filed said original suit for said Buck, and who filed all of these individual suits in the same District Court, i. e., the 67th District Court of Tarrant County, Texas, for all of which said suits, citation was duly served on this Plaintiff, answerable on [fol. 7] the 4th day of September, 1922. That the suit filed by said Buck on to-wit said 20th day of June was duplicitous and an additional harassment of Plaintiff herein inasmuch as said Buck had never withdrawn his original suit filed on to-wit the 28th day of January, 1922.

7

Plaintiff further avers that said Defendants and all of them have entered into an agreement and conspiracy to embarrass and to attempt to ruin this Plaintiff. That pursuant to said agreement and

conspiracy they endeavored to secure their election as Delegates to the biennial meeting and session of the Sovereign Camp of this Plaintiff at New York city in July, 1921, at the meeting of the Head Camp of the State of Texas at Houston on or about the 8th day of March, 1921. That notwithstanding their endeavors none of said Defendants was elected or entitled to be recognized as a Delegate to said meeting at said Sovereign Camp, but that other parties were duly elected and qualified as such Delegates. That said Defendants being duly and legally defeated in accordance with the Constitution, Laws and By-Laws governing this association, to which said Constitution, Laws and By-Laws said Defendants and each of them subscribed and by which they agreed to be governed in their respective applications for membership in the society, they nevertheless, in order to secure recognition and appointment to said offices of Delegates, resorted first to the District Courts of the State of Texas, and failing there, appealed to the Committee on Credentials of the Sovereign Camp Woodmen of the World, which said Committee was duly and legally appointed pursuant to the Constitution, Laws and By-Laws of this association for the purpose of passing on such election contests. That said Committee gave these Defendants and all of them a fair, just and impartial hearing on their contest pursuant to the Constitution, Laws and By-Laws of this association, at which hearing said Defendants were represented by counsel, and [fol. 8] having heard all of the evidence offered in said contest, decided and determined that none of said Defendants was entitled to be recognized as a Delegate to said Convention or entitled to any of the benefits, privileges and perquisites attaching to said office, but that on the contary the other candidates had been duly and legally elected. That said report and recommendation of said Committee was then made to the Sovereign Camp and after discussion, duly adopted and the other candidates declared elected and these Defendants not elected as Delegates. That said Defendants still acting in concert and conspiring to embarrass and to attempt to ruin this Plaintiff then filed their suit as alleged in the name of R. H. Buck and assigned all of their alleged claims against this Plaintiff to him, and later as previously set out, all of said Defendants other than said Buck, withdrew from said original suit and refiled their alleged claims individually against this Plaintiff.

8

Plaintiff further alleges that in each of the twenty-six (26) suits filed in said 67th District Court of Tarrant County, Texas, against this Plaintiff the same identical questions are involved and the same cause of action is alleged against this Plaintiff and in identical language in all of said different petitions, which said alleged cause of action is as set out above. That all of said Defendants first in assigning their alleged causes of action to said R. H. Buck and second in attempting to break said cause of action up into twenty-five (25) separate suits, are acting pursuant to a joint agreement and conspiracy among themselves entered into for the purpose of em-

barrassing and attempting to ruin and destroy this Plaintiff. That if this Plaintiff is compelled to defend each individual suit at law it will thereby be subjected to an enormous expense and the necessity of trying twenty-five (25) different suits, whereas there is in [fol. 9] reality only one issue concerned in all of said suits, and said suits can and should all be tried in one cause. That by reason of these facts Plaintiff's remedy at law is inadequate, and therefore, Plaintiff should be granted the relief hereinafter sought.

9

Plaintiff further alleges that there is no merit or equity or justice in the cause of action set up by any of said Defendants, but that said suits and all of them are wholly without any foundation, either in law or in equity. That said Defendants and each of them at the time they made application for membership in Plaintiff's society signed a written application for such membership by the terms of which they agreed to accept and be governed by the Constitution, Laws and By-Laws of said society. That said Constitution, Laws and By-Laws provide a just, fair and equitable system of laws for the purpose of governing the election and qualifications of Delegates to said Sovereign Camp and for the adjudication of any contest that might take place with reference to such elections within the society. That section 144 of said Constitution, Laws and By-Laws is as follows: "The Head Consul and the Junior Past Head Consul of Head Camps shall by virtue of their offices be delegates to the Sovereign Camp. There shall also be elected at the meeting immediately preceding the stated meeting of the Sovereign Camp, one delegate from each state having 500 or more members in its limits, within each jurisdiction except the state wherein the Head Consul resides; and also one delegate-at-large for each succeeding 5,000 members in excess of the first 5,000 members, or three-fourths fraction of such succeeding 5,000 members in good standing within said jurisdiction, as shown by the reports of the Camp Clerks to the Sovereign Clerk, for the current installment of assessment for the month of December, including all certificates issued during the said month of December, immediately preceding said meeting. Only regularly seated mem- [fol. 10] bers of the Head Camp shall be eligible as delegates to the Sovereign Camp. Each delegate shall be entitled to one vote, and serve two years and until his successor is elected and qualified." Section 29 (*a*) of said Constitution, Laws and By-Laws provides as follows: "The Sovereign Camp shall be composed of its elective officers, Head Consuls, Junior Past Head Consuls of Head Camps and delegates from Head Camps (see section 144) * * *." Section 29 (*c*) of said Constitution, Laws and By-Laws is as follows: "No person holding a salaried office in a competing society, or employed by any such competing society or who is the agent of any life insurance company shall be eligible as a delegate or officer to the Head Camp or to the Sovereign Camp. Nor shall such person be eligible to sit in the Head Camp or in the Sovereign Camp either as an officer, Head Consul, or Past Head Consul. If any Head Consul, Past Head

Consul, delegate or officer shall become an officer of any competing society or be employed by such competing organization, or by a life insurance company as outlined above, his office as such officer, Head Consul, Past Head Consul or delegate shall thereby become vacant * * *." Section 10 (*a*) is as follows: "The Sovereign Commander shall preside at all meetings of the Sovereign Camp and the Sovereign Executive Council, and shall have a general supervision over the affairs of this Society; shall discipline and dispose of charges against Camps and Head Camps for violations of the laws of this Society, or appeals from decisions of same; shall construe the laws of this Society and be the executive officer thereof, * * *." Section 10 (*c*) is as follows: "The decisions of the Sovereign Commander on all questions involving the construction of the Laws of this Society shall be final and binding upon all officials and members unless reversed or modified by the Sovereign Executive Council or *Sovereign Executive Council or* Sovereign Camp, as herein provided. Any person aggrieved by any such decision may within six months after the rendering of such decision appeal therefrom to the Sovereign Executive Council; provided, that such appeal may be taken [fol. 11] directly to the Sovereign Camp in event its next session is held prior to the next meeting of the Sovereign Executive Council. If an appeal is taken to the Sovereign Executive Council, its decision shall be final, unless the member appeal therefrom to the next session of the Sovereign Camp." Section 2 of said Constitution, Laws and By-Laws is as follows: "The Sovereign Camp shall have original and appellate jurisdiction in all matters pertaining to the general welfare of this Society. It may entertain and determine charges against any of its members and all other matters of controversy which may be brought to it on appeals from Camps, Head Camps and the Sovereign Executive Council, and its decision shall be final. It shall issue and may revoke charters to Camps. It shall have the power to enact laws for its own government, the government of its Head Camps and Camps, and for the control and management of the business of this Societ- generally, and to provide penalties for the violation thereof. It shall have power to prescribe the rights, privileges, duties and responsibilities of itself, its Camps and Head Camps, and the membership of this Society, and to finally determine the same. It shall prepare and publish the rituals and ceremonies of this Society. It shall have power to provide for the levy and collection of assessments, premiums and dues on its members, necessary to pay all beneficiary claims and expenses of management, and shall have generally such powers and may perform such duties as it may deem wise for the welfare of the Society, and to establish the rights and perpetuity of this Society. It shall be the sole judge of the election and qualification of its own officers and members, and shall establish rules for their government and may, by itself, or through its Sovereign Executive Council, suspend or remove any officer or member for cause." That said rules and regulations governing such elections were and are just, fair and equitable and that said Defendants and each of them agreed to be bound by them at the time [fol. 12] of his entrance in to said society and the certificate of mem-

bership issued each of said Defendants so stated. That under the terms and provisions of said Constitution, Laws and By-Law, the election of delegates to said Sovereign Camp at New York was held in the city of Houston, Texas, and other candidates for such offices than Defendants were elected and their names certified to the Sovereign Clerk of this society by the Head Clerk of said Head Camp of Texas. That said Defendants were not satisfied with the outcome of said election but carried their contest and appeal to the Sovereign Camp in session in New York City as provided for by said Constitution, Laws and By-Laws, which said contest was then referred by said Sovereign Camp to its Committee on Credentials. That said Committee on Credentials then gave Defendants and each of them a fair just and impartial hearing, allowing them the privilege of being represented by counsel. At which hearing said Committee then found that none of said Defendants had been elected to the office of Delegate to the said Sovereign Camp, and recommended to said Sovereign Camp that the Delegates whose names had been certified to said Sovereign Camp by the Head Camp of the State of Texas be seated by said Sovereign Camp as such Delegates. That said recommendation of said Committee was then submitted to debate and a vote and that said recommendation was then carried by the Sovereign Camp by a vote of one hunderd and twenty (120) in the affirmative and twelve (12) in the negative. That the office of delegate to the Sovereign Camp of the Woodmen of the World is an office created by said Constitution, Laws and By-Laws and no member can be elected to said office who is not qualified as prescribed in said Constitution, Laws and By-Laws or in any other manner than as prescribed by the Constitution, Laws and By-Laws. That said decision of said Sovereign Camp that none of said Defendants had been elected or was entitled to be seated as a Delegate at said Camp was rendered pursuant to said Constitution, Laws and By-Laws and was a final de-
[fol. 13] cision. That Section 35 (*a*) of said Constitution, Laws and By-Laws is as follows: "The Sovereign Camp shall fix the compensation of its officers, members of the Sovereign Executive Council and standing committees, and shall pay such mileage and per diem to its members as it may determine at its sessions for attending the same." That said Sovereign Camp having determined that none of these Defendants are entitled to any compensation, mileage or per diem, its decision is final and binding on said Defendants and all of them.

10.

Plaintiff further shows to the court that all of said suits filed by said Defendants in the 67th District Court of Tarrant County, Texas, are answerable on the 4th day of September, 1922, and that unless plaintiff shall be granted the relief hereinafter sought either default judgments will be granted against plaintiff in said causes or Plaintiff will be put to the necessity of defending numerous suits by numerous parties, all of which involve a common question and which can and should be all disposed of in one action.

Wherefore, Plaintiff prays that pending the final determination of this cause this court issue a temporary injunction restraining said defendants and each of them, their agents and attorneys from prosecuting or in any wise pursuing their said suits heretofore filed against this plaintiff in the said 67th District Court of Tarrant County, Texas, or in any other manner endeavoring to collect any sum or sums of money from this plaintiff by reason of any of the matters alleged herein and that on final hearing hereof such injunction be made final and perpetual.

Plaintiff further moves the court for a temporary restraining order without notice restraining the above named defendants from doing any of said acts until the application of this plaintiff for a temporary injunction can be heard, for the reason that answer day in said 67th [fol. 14] District Court will arrive before the application for an injunction can be heard and immediate and irreparable injury, loss and damage will result to plaintiff before notice can be served and a hearing had thereon.

Gresham and Willis, Alvin H. Lane, Attorneys for Plaintiff.

STATE OF TEXAS,
County of Dallas:

Alvin H. Lane, being first duly sworn, on oath deposes and says that he is one of the solicitors for the Plaintiff herein; that said Plaintiff is a foreign corporation and has no officer or agent within the State of Texas, wherefore he makes this verification for and on behalf of said Plaintiff and as their said solicitor; that he has read the foregoing bill of complaint and knows the contents thereof, and that the matters therein stated are true, to the best of his knowledge, information and belief.

Alvin H. Lane.

Subscribed and sworn to before me this 30 day of August, 1922. O. B. Freeman, Notary Public, Dallas County, Texas. (Seal.)

[File endorsement omitted.]

[fol. 15] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

In Equity. No. 2955-213

[Title omitted]

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S BILL OF COMPLAINT —Filed March 3, 1923

Now come the defendants in the above entitled and numbered cause, and move to dismiss the Bill of Complaint filed herein, for

the reasons and upon the grounds that as appears upon the face thereof, as follows:

1

Said bill of complaint does not state facts sufficient to warrant this court in granting any relief to the plaintiff.

2

That plaintiff has a plain, speedy and adequate remedy at law.

3

That this court does not have jurisdiction to entertain the same.

4

That none of said individual claims sued upon as shown in such bill of complaint are of an amount sufficient to give this court jurisdiction, and plaintiff cannot aggregate such individual claims, each less than the jurisdictional amount, and thereby vest this court with jurisdiction.

5

Because suits have been instituted upon all of such claims in the District Court of Tarrant County, Texas, Sixty-seventh District, a court of competent jurisdiction of the State of Texas, wherein all of such suits are now pending.

[fol. 16] Wherefore, these defendants pray that the Bill of Complaint herein be dismissed, and for such orders as may be proper in the premises.

Capps, Contey, Hanger & Short, Attorneys for the Defendants.

[fol. 17] IN UNITED STATES DISTRICT COURT

OPINION OF COURT ON MOTION TO DISMISS—Filed March 3rd, 1923

The Defendant and twenty-four others assigned to a Mr. Buck certain claims which they alleged against the Plaintiff. Mr. Buck brought suit on such claims against the Plaintiff in the state court. The aggregate amount was approximately $25,000.

The plaintiff in the state court suit, Mr. Buck, resided in Texas and the Defendant, Woodmen of the World, plaintiff here, was a non-resident corporation.

It gave notice, under the statute, that it would seek to remove the case from the state to the Federal Court.

Before it filed its application and bond, for this purpose, plaintiff dismissed his suit. Afterward the twenty-five persons who had assigned their claims to Mr. Buck brought twenty-five separate suits in the state court against the same defendant, who is the plaintiff here. The petition of each plaintiff is identical. The cause of action is identical. The Attorneys are identical. The defendant, of course, is identical.

The Defendant in that suit prepared the complaint which is now before this court, making itself plaintiff, and all of the twenty-five plaintiffs, defendants in this action, claiming a conspiracy between the defendants to defraud it and embarrass it, and asking for an injunction to stay this multiplicity of causes.

Judge West, who as acting Judge for the Northern District, in the summer of 1922, granted a temporary restraining order as prayed, and, this order, has, from time to time, been maintained by the agreement of all parties plaintiff and defendant.

[fol. 18] The defendants now present their motion to dismiss on the ground that there is no equity in the bill and *on the ground that there is no equity in the bill and* on the ground that section 265 of the judicial code, which reads as follows:

"The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

prevents such relief.

The claim of neither one of the defendants here, plaintiffs in the state court, amounts to the sum of $3,000, though the aggregate of the twenty-five claims is, of course, greatly in excess of such sum.

Jurisdiction being claimed for this court upon the ground of diversity of citizenship, I hold that the jurisdictional amount is not present.

Parties having causes of action against a corporation, even though other jurisdictional requirements were present, cannot, by aggregating their individual claims, each less then the jurisdictional amount, come into this court for relief.

Robinson vs. Wemmer, 253 F. 793;
Wheless vs. St. Louis, 180 U. S. 379;
Ogden City vs. Armstrong, 168 U. S. 228;
Russell vs. Stansell, 105 U. S. 303;
Walter vs. Northeastern, 147 U. S. 370.

The matter in dispute, within the meaning of the statute, is not the principle involved, but the pecuniary consequence to the individual party, dependent on the litigation; as, for instance, in this suit the amount of the claim made by each of the defendants against the plaintiff, separately. If a decision of the court were adverse to the plaintiff each of the defendants would be benefited in a sum [fol. 19] less than $3,000. If a decision on the merits were adverse

to the defendants the plaintiff would be relieved from the payment of each individual defendant's claim, each of which is less than $3,000.

2nd

The Defendants cite, Pomeroy on Equity Jurisprudence, Vol. 1, section 245, which reads as follows:

"Where a number of persons have separate and individual claims and rights of action against the same party.

(a) but all arising from the same common cause, are governed by the same legal rule, and involve similar facts, brought by all these persons united as co-plaintiffs, or one of the persons suing on behalf of the others, or even by one person suing for himself alone."

This text does not seem to be an answer to that line of cases which support the heart and purpose of section 265 of the judicial code, quoted above.

Essanay Film Company vs. Kane, 258 U. S., 42 Supreme Court 318.
King vs. Fernby, 283 F. 450;
Robinson vs. Wemmer, et al. 253 F. 790;
Smith vs. Jennings, 238 F. 48;
Texas and Pacific vs. Kuteman, 54 F. 547;
Mallory Steamship vs. Thalhein, 277 F. 196.

The plaintiffs cite in addition to the text mentioned above, Marshall vs. Holmes 141 U. S. 589, and

McDaniel vs. Traylor, 196 U. S. 415;
Wyman vs. Boen, 127 F. 253;
Supreme Lodge vs. Ray, 166 S. W. 46;
Montgomery Light & Water Company vs. Charles, et al., 258 Fed. 723, and,
Commodores Point Terminal vs. Hadnall, 283 F. 150.

These citations, with the exception of Montgomery Light & Water Company vs. Charles, and perhaps one other, deal with such causes of action as may be pleaded equitably for relief from final judgments, [fol. 20] fraudulently obtained, or final decrees, fraudulently obtained in state courts.

They do not respond to the question that is now under consideration, namely, the preservation of the integrity and independence of the two systems of courts, or rather the courts of the two sovereignties, state and federal.

Without attempting a differentiation, or discussion, of Montgomery Light & Water Company vs. Charles it will be noticed that some of the defendants in that case, who were plaintiffs in the state court, claimed an amount within the jurisdiction of the federal court, and as to such parties the causes had been removed to the Federal Court. Likewise it is indicated in the opinion, page 726, that the defendants acquiesced in the jurisdiction of the Federal Court.

We have no right to assume that in each of the cases which is now pending in the state court, that each of the parties, the defendant as well as the plaintiff, will not receive justice, and, certainly, in each of the causes, the defendant has a complete and adequate remedy at law.

Judge Killits, in Robinson vs. Wemmer, said:

"It is no conspiracy for two or more persons, each having a separate and independent cause of action against a third, to agree that they will simultaneously by independent and separate suits, proceed against their adversary. There is no other way in which they could individually make their contentions than by separate suit, and it means nothing that they agree together to sue, or that they employ the same attorney. The coincidence that each claimant against Robinson in the state court predicates his claim upon facts analogous [fol. 21] to the facts relied upon by every other claimant is not enough, even when combined with an agreement for each independent claimant to suit, to permit the aggregating of these claims and either a removal to this court or an appeal to this court for injunctive relief to stop the state proceedings. The remedy sought by complainant is beyond the extraordinary powers of this court."

Upon the larger question the Supreme Court of the United States in Essany Film Company vs. Kane, said:

"In this court, as in the courts below, appellant's chief reliance is upon Simon vs. Southern R. Co., 236 U. S. 115. Without intimating that in other respects the cases are parallel, it is a sufficient ground of distinction that this is an attempt to use the process of the federal court to restrain further prosecution of an action still pending in a state court, while that cited was a case of enjoining a successful litigant from enforcing a final judgment of a state court held void because procured without due process. As was pointed out in that case (pages 123 et seq.) the prohibition originated in the Act of Congress March 2, 1793 (1 Stat. 334, c. 22, 5), was based upon principles of comity, and designed to avoid inevitable and irritating conflicts of jurisdiction. But when the litigation in the State court has come to an end and final judgment has been obtained the question whether the successful party should in equity be debarred from enforcing the judgment, either because of his fraud or for the want of due process of law in acquiring jurisdiction is a different question, which may be passed upon by a federal court without the conflict which it was the purpose of the Act of 1793 to avoid."

[fol. 22] For the reason that there is no jurisdiction as to amount, and for the further reason that Section 265 of the judicial code provides otherwise, this court is without jurisdiction to try this bill and the same is dismissed and the decree will be prepared accordingly.

Wm. H. Atwell, United States District Judge.

[File endorsement omitted.]

[fol. 23] IN UNITED STATES DISTRICT COURT

FINAL DECREE—Filed March 30th, 1923

On this day the above numbered and entitled cause coming on to be heard on the Defendants' Motion to Dismiss, all parties being before the court both plaintiff and defendants, the court after considering said Motion and hearing the arguments thereon, is of the opinion that said Motion should be and the same is hereby granted; this cause is therefore dismissed in accordance with the decree on file with the papers, to which action of the court plaintiff in open Court excepted, gave notice of appeal and the court here grants 30 days within which to perfect appeal.

Dated this 3rd day of March, 1923.

Wm. H. Atwell, Judge Northern District of Texas.

[fol. 24] IN UNITED STATES DISTRICT COURT

MOTION FOR EXTENSION OF TIME FOR APPEAL—Filed April 2nd, 1923

Now comes the plaintiff, Sovereign Camp Woodmen of the World, and respectfully represents to the Court that it desires to appeal from the Decree and Order entered herein on the third day of March, 1923, dismissing this suit, but that it has been unable to do so within the thirty days limited in said Order. That under the provisions of the United States Statute and Section 1228 (*a*) thereof, plaintiff is entitled to a period of three months after the entry of the said Decree within which to appeal therefrom to the Supreme Court of the United States.

Wherefore, plaintiff prays that it be granted an extension of thirty days within which time to perfect its appeal from said Order and Decree.

Dated this 2nd day of April, 1923.

D. E. Bradshaw, Gresham & Willis, Alvin H. Lane, Attorneys for Plaintiff.

[fol. 25] IN UNITED STATES DISTRICT COURT

ORDER OF COURT GRANTING EXTENSION OF TIME WITHIN WHICH TO PERFECT APPEAL—Filed April 2nd, 1923

On this second day of April, 1923, came on to be heard Plaintiff's Motion in the above styled cause for an extension of thirty days within which to perfect its appeal from the Order and Decree of the Court entered in this Cause on the third day of March, A. D. 1923, and the court, having duly considered same is of the opinion that it should be granted.

Now therefore, the said Plaintiff is hereby granted an extension of thirty days from this date within which period to perfect its appeal herein.

Done this 2nd day of April, A. D. 1923.

Wm. H. Atwell, Judge.

[fol. 26] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

[Title omitted]

PLAINTIFF'S PETITION FOR AND ORDER ALLOWING APPEAL—Filed April 5th, 1923

The above named plaintiff conceiving itself aggrieved by the decree made and entered on the third day of March 1923, in the above entitled cause, does hereby appeal from said Order and Decree to the Supreme Court of the United States for the reasons specified in the Assignment of Errors which is filed herewith and prays that this appeal may be allowed and that a transcript of the record proceedings and papers upon which said Order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 2nd day of April, A. D., 1923.

D. E. Bradshaw, Gresham & Willis, Alvin H. Lane, Attorneys for Plaintiff.

The foregoing claim of appeal is allowed.

Dated this 5th day of April A. D., 1923.

Wm. H. Atwell, District Judge.

[fol. 27] IN UNITED STATES DISTRICT COURT

PLAINTIFF'S ASSIGNMENT OF ERROR—Filed April 2nd, 1923

The plaintiff herein prays an appeal from the final Decree of this Court dated the third day of March, A. D. 1923, to the Supreme Court of the United States and assigns for error:

I

The court erred in sustaining the defendants' Motion to Dismiss plaintiff's Bill of Complaint and in dismissing said Bill.

II

The court erred in ruling that it did not have jurisdiction on the ground of diversity of citizenship on account of the fact that the jurisdictional amount necessary was not present.

III

The court erred in ruling that the relief sought by plaintiff would constitute a violation of Section 265 of the Judicial Code which reads as follows:

"The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

and that for that reason it had no jurisdiction to entertain this suit.

IV

The court erred in refusing to grant a preliminary injunction as prayed for by plaintiff herein.

The Plaintiff prays that a Preliminary Injunction be granted as prayed by plaintiff in order to maintain the matter in statu quo pending the appeal.

D. E. Bradshaw, Gresham & Willis, Alvin H. Lane, Attorneys for Plaintiff.

[fol. 28] IN UNITED STATES DISTRICT COURT

WAIVER OF CITATION FOR APPEAL—Filed April 17th, 1923

Now come E. E. O'Neill, B. F. Vaughan, R. H. Buck, Sterling P. Clark, Chas. Piller, T. F. Temple, J. H. Sutton, A. H. Armstrong, J. H. Hilton, E. D. King, Conde R. Hoskins, J. S. Jones, T. D. Lovelady, Max M. Landa, J. H. Foster, E. J. Miller, E. M. Pevoto, Bruce W. Bryant, T. J. Bedell, Arthur Beck, John M. Raiden, H. G. Evans, B. F. Gafford, J. W. Adamson and William W. Waters, defendants in the above entitled cause, and waive the issuance and services of citation for the appeal of the plaintiff, Sovereign Camp Woodmen of the World, from the decree rendered on March 3rd, A. D. 1923, by the Judge of the United States District Court for the Northern District of Texas, Dallas Division, dismissing plaintiff's Bill of Complaint, herein to the Supreme Court of the United States, and agree that they shall be bound to appear before the said Supreme Court in the City of Washington, D. C. on the 17th day of May, next in like manner as if citation had been duly issued and served on them herein for such appeal.

Dated this 17th day of April, A. D. 1923.

Capps, Cantey, Hanger & Short, Attorneys for Said Defendants.

[fols. 29 & 30] IN UNITED STATES DISTRICT COURT

APPEAL BOND—Filed April 17, 1923 [for $300.00; approved, Atwell, J.; omitted in printing]

[fol. 31] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

I, Louis C. Maynard, Clerk of the United States District Court for the Northern District of Texas, do hereby certify that the foregoing is a true and correct transcript of the record, assignments of error and all proceedings in Cause No. 2955-213 In Equity, styled, Sovereign Camp Woodmen of the World, is Plaintiff, and E. E. O'Neill, et al., are Defendants, as fully as the same now remain on file and of record in my office at Dallas, Texas.

Witness my hand officially and the seal of said Court at Dallas, Texas, this 24th day of April, A. D. 1923.

Louis C. Maynard, Clerk, By Mary Conger, Deputy. (The Seal of the U. S. District Court, Northern Dist. Texas. Dallas.)

Endorsed on cover: File No. 29,601. Northern Texas D. C. U. S. Term No. 320. Sovereign Camp, Woodmen of the World, appellant, vs. E. E. O'Neill, B. F. Vaughan, R. H. Buck, et al. Filed May 4th, 1923. File No. 29,601.

(9825)

INDEX

CASES CITED.

(29,601)

—o—

IN THE

Supreme Court of the United States

—o—

No. 320

—o—

SOVEREIGN CAMP WOODMEN OF THE WORLD,
Appellant,

vs.

E. E. O'NEILL, B. F. VAUGHAN, R. H. BUCK, et al.,
Appellees.

—o—

Appeal from the District Court of the United States for the Northern District of Texas.

—o—

BRIEF FOR APPELLANT.

—o—

There are two questions involved in this appeal, both involving the jurisdiction of the District Court below as a Federal Court: 1. Plaintiff's petition being founded on diversity of citizenship, was the requisite jurisdictional amount present? 2. Since the relief sought by plaintiff below incidentally required that the defendants be enjoined from prosecuting a num-

ber of vexatious suits in the state court, did Section 265 of the Judicial Code prohibiting the issuance of injunctions by federal courts to stay proceedings in any state courts, except in cases of bankruptcy, prohibit the federal court from taking jurisdiction of this case?

On the 28th of January, 1922, R. H. Buck, one of the defendants below filed suit in the 67th District Court of Tarrant County, Texas against appellant, alleging that the twenty-four (24) other parties defendant below had assigned to him certain causes of action against appellant, which he alleged grew out of certain fraudulent conduct on the part of appellant at a convention held in Houston, Texas on March 8, 1921. The aggregate amount sued for was approximately Twenty-Eight Thousand, Eight Hundred, Eighty-Two Dollars ($28,882.00).

The plaintiff in the suit just described, Mr. Buck, resided in Texas and the defendant, Sovereign Camp Woodmen of the World, appellant herein, resided in the state of Nebraska. Incidentally, all of the other appellees in this suit also resided in the state of Texas.

The Sovereign Camp Woodmen of the World gave

notice under the statute that it would seek to remove the original suit to the Federal Court. However, before it could file its application and bond for this purpose, plaintiff dismissed his suit. Promptly thereafter he and each of the other twenty-four (24) parties who had assigned his claim to Mr. Buck, brought a separate suit in the State Court against the defendant, this appellant. The petitions, except for the name of each plaintiff and some slight variations in the amount sued for, based on mathematical computations, were carbon copies of each other. The cause of action asserted by each plaintiff against defendant was based on the same identical alleged fraudulent acts of defendant. The suits were all filed by the same attorneys who filed the original suit.

Appellant then prepared its petition to the District Court of the United States for the Northern District of Texas, Dallas Division, alleging that it was being harassed by a multiplicity of suits by all of the parties above mentioned; that each of these suits arose out of and was based on the same questions of law and fact; that said parties were acting jointly in the furtherance of a conspiracy to embarrass and to attempt to ruin appellant; that the mat-

ters involved in all of said suits could and should be disposed of in one suit; and asking for an injunction to stay this multiplicity of suits.

A temporary injunction was issued forthwith. The defendants then filed their motion to dismiss the suit on the grounds that there was no equity in the bill and on the grounds that the relief sued for was in controversion of the provisions of Section 265 of the Judicial Code. On hearing, Judge Atwell dismissed the bill on the ground that the amount necessary for federal jurisdiction was not present, and that the relief sued for was beyond the jurisdiction of the court.

The errors complained of on this appeal are: 1. The ruling of the court that the jurisdictional amount necessary was not present. 2. The ruling of the court that the relief sought by plaintiff would constitute a violation of Section 265 of the Judicial Code, and that for that reason it had no jurisdiction to entertain this suit.

The present suit is not merely, or even principally, a suit for the enjoining of proceedings in a *state* court. It is not an attempt to remove to the federal court and to litigate there suits already begun in the state court. It is a separate and distinct cause of

action for the purpose of enforcing a separate and distinct right belonging to appellant which was not involved in any of the suits before the state court, and over which the state court has not taken jurisdiction in any of the suits sought to be enjoined: namely, appellant's right not to be harassed by a great number of suits, all involving and depending on the same questions of law and fact and collusively brought by all of the defendants, appellees herein, for the purpose of embarrassing and attempting to ruin appellant. Appellant has not sought, and is not now seeking to enjoin the state court from further proceedings in any of the matters pending before it, but it does seek to prevent the individuals from filing separate suits and from accomplishing their purpose of embarrassing appellant, and of compelling appellant to go to the trouble and expense of defending twenty-five (25) separate suits when all of the matters involved can be effectively and justly disposed of in one single proceeding.

It has always been recognized by the federal courts that the prohibition against enjoining proceedings of a state court imposed by Section 265 of the Judicial Code is not absolute; that there are circumstances under which it is permissible and proper that a fed-

eral court should issue its injunction for the purpose of protecting a right submitted to its jurisdiction, even though the effect of that injunction may be, incidentally, to stop the further prosecution of a matter pending in the state court. A well recognized instance of this character is the situation which arises when a plaintiff, before a federal court, seeks to enjoin a defendant from making an unconscionable use of a judgment fraudulently secured by him in a state court. In the case of Marshall vs. Holmes, 141 U. S. 589, numerous judgments were rendered in the state court in favor of the same party against the same defendant. In each case the judgment was for less then $500.00, but the aggregate of all the judgments was over $3,000.00. After the close of the term, the defendant against whom the judgments were rendered, filed a petition in the same court for the annulment of the judgments upon the grounds that without negligence, laches or other fault on his part, they had been fraudulently obtained. Subsequently the petitioner filed a proper petition and bond for the removal of the case into the Circuit Court of the United States. In discussing this matter, Mr. Justice Harlan said:

> "These authorities would seem to place beyond question the jurisdiction of the Circuit Court to

take cognizance of the present suit, which is none the less an original, independent suit because it relates to judgments obtained in the court of another jurisdiction. While it cannot require the state court, itself, to set aside or vacate the judgments in question, it may, as between parties before it, if the facts justify such relief, adjudge that Mayer shall not enjoy the inequitable advantage obtained by his judgments. A decree to that effect would operate directly upon him, and would not contravene that provision of the statute prohibiting a court of the United States from granting a writ of injunction to stay proceedings in a state court. It would simply take from him the benefit of judgments obtained by fraud."

In the case of National Surety Company vs. State Bank, 120 Fed. 593-601, Mr. Justice Sanborn of the 8th Circuit, said:

"The constitution of the United States and the acts of Congress have conferred upon the federal circuit courts the jurisdiction to hear and determine controversies between citizens of different states in which the matter in dispute exceeds $2,000.00 in value. This suit presents such a controversy. It is a new controversy, which has never been presented to or decided by the state court which rendered the judgment, the enforcement of which the complainants seek to prevent. It involves the question whether or not the appellants were prevented by unavoidable accident

from availing themselves of a good defense to the claim on which that judgment is based, and, if so, whether or not the judgment plaintiff should be permitted to collect the judgment. The Circuit Court of the United States has jurisdiction of this controversy, and the appellants have the legal right to a hearing and decision of the questions which it presents, and to the relief which the decision of those questions entitles them. That court may not lawfully renounce that jurisdiction. It cannot rightfully deny to the appellants the right to the decision, decree and writ to which they show themselves entitled. It is not the judgment of the state court against which these appellants level the injunction they seek. It is against the plaintiff in that judgment. It is against the unconscionable use by that plaintiff of the judgment which he has recovered to perpetrate an unconscionable wrong * * * *. The decisions of the Supreme Court which have been cited, however, have so conclusively disposed of this question that more extended discussion would be unprofitable; and we leave it with this brief statement of the reasons which have induced, and which amply sustain, the rule that the Circuit Courts of the United States have the same jurisdiction and power to enjoin a judgment plaintiff from enforcing an unconscionable judgment of a state court, which has been procured by fraud, accident, or mistake, that they have to restrain him from collecting a like judgment of a federal court."

In the case of Wells-Fargo & Co. vs. Taylor, 254 U. S. 175-183, Mr. Justice Van Deventer said:

"The provision (Section 265 Judicial Code) has been in force more than a century and often has been considered by this court. As the decisions show, it is intended to give effect to a familiar rule of comity and like that rule is limited in its field of operation. Within that field it tends to prevent unseemly interference with the orderly disposal of litigation in the state courts and is salutary; but to carry it beyond that field would materially hamper the federal courts in the discharge of duties otherwise plainly cast upon them by the Constitution and the laws of Congress, which, of course, is not contemplated. As with many other statutory provisions, this one is designed to be in accord with, and not antagonistic to, our dual system of courts. In recognition of this it has come to be settled by repeated decisions and in actual practice that, where the elements of federal and equity jurisdiction are present, the provision does not prevent the federal courts from enjoining the institution in the state courts of proceedings to enforce local statutes which are repugnant to the Constitution of the United States; * * or prevent them from maintaining and protecting their own jurisdiction properly acquired and still subsisting, by enjoining attempts to frustrate, defeat or impair it through proceedings in the state courts; * * * or prevent them from depriving a party, by means of an injunction, of the benefit of a judgment obtained in a state

court in circumstances where its enforcement will be contrary to recognized principles of equity and the standards of good conscience." * * *

The cause of action asserted by appellant in the present suit, namely, the prevention of a multiplicity of suits, is a head of equity jurisdiction no less recognized than the jurisdiction to prevent the enforcement of a judgment inequitably obtained. It is recognized in the state courts of the state of Texas. In the case of Supreme Lodge vs. Ray, 166 S. W. 46, thirty-nine members of a Fraternal Benefit Association had each filed a separate suit in the Justice Court for the purpose of determining the right of the Association to put in force an increased rate of assessment. The Association then filed its suit in the District Court to enjoin the prosecution of these thirty-nine separate suits, alleging that they all involved a single and a common question of fact and law between the Association and all of the defendants, which could be decided in a single suit and thereby prevent a multiplicity of suits. Judge Levy of the Texas Court of Civil Appeals of Texarkana on page 49 says:

"The text books recognize the general rule to the effect that equity will enjoin the prosecution

of numerous suits at law where all arise from some common source, and are governed by the same legal rule and involve similar facts, and the whole matter might be settled in a single suit, and it is apparent that the maintenance of many separate suits will result in loss and be against the material interest of the parties * * * *. It it believed that this particular suit under the particular grounds alleged affords reasons for the exercise of equitable jurisdiction by the district court, and we so hold."

In Vol. 1, of Pomeroy's Equity Jurisprudence, 3rd Edition, Section 269, page 445, the author says:

"Under the greatest diversity of circumstances, and the greatest variety of claims arising from unauthorized public acts, private tortious acts, invasion of property rights, violations of contract obligations, and notwithstanding the positive denials of some American courts, the weight of authority is simply overwhelming that the jurisdiction may and should be exercised, either on behalf of a numerous body of separate claimants against a single party, or on behalf of a single party against such a numerous body, although there is no 'common title,' nor 'community of right' or 'interest in the subject-matter,' among these individuals, but where there is and because there is merely a community of interest among them in the questions of law and fact involved in the general controversy, or in the kind and form of relief demanded and obtained by or

against each individual member of the numerous body. In a majority of the decided cases, this community of interest in the questions at issue and in the kind of relief sought has originated from the fact that the separate claims of all the individuals composing the body arose by means of the same unauthorized, unlawful, or illegal act of proceeding. Even this external feature of unity, however, has not always existed, and is not deemed essential."

This statement of Mr. Pomeroy has been followed by an overwhelming majority of the decided cases. We submit that the petition in the present case presents a clear case in which equity should give relief to appellant against the harassment and expense of the many trials with which it is threatened. This being true, the fact that some, or even all of the suits sought to be enjoined are pending before a state court is immaterial. The federal court has jurisdiction to prevent the defendants in this suit from harassing appellant with a great number of vexatious suits, all involving the same question of fact and law, just as much as it would have to prevent any defendant from making an inequitable use of a state court judgment fraudulently obtained; and it has just as much authority, notwithstanding the provision of Section 265 of the Judicial Code, to enjoin these defendants from

further prosecuting their state court suits as it would have to enjoin any defendant from enforcing a state court judgment.

This has been recognized and injunctions have been issued by the federal courts enjoining the prosecution of a multiplicity of suits, some of which were actually pending at the time in the state court, in the following cases:

Virginia-Carolina Chemical Company vs. Home Insurance Company, 113 Fed. 1.

Montgomery Light and Power Company vs. Charles, et al, 258 Fed. 723.

Commodores Point Terminal Co., et al vs. Hudnall, et al, 283 Fed. 150.

It is submitted that the decisions in these cases are well reasoned and that the mere fact that some or all of the suits sought to be enjoined are pending before the state court, should not deprive the federal court of jurisdiction to give the petitioner before it relief against the harassment of a multiplicity of suits where the parties, plaintiff and defendant, are of diverse citizenship and the amount involved is in excess of Three Thousand Dollars ($3,000.00).

The matter in controversy in this suit is the right

of appellant to be protected from the harassment and expense of trying twenty-five (25) different suits which involve the same questions of law and fact and total approximately Twenty-Eight Thousand, Eight Hundred, Eighty-Two Dollars ($28,882.00). Appellant, in its petition below, alleged that this matter exceeded, exclusive of interest and costs, the sum or value of Three Thousand Dollars ($3,000.00). On demurrer, in the absence of other circumstances inconsistent therewith, this allegation must be taken as true. Certainly the other circumstances present are not inconsistent with, but on the contrary, sustain the truth of that statement.

The amount involved in an injunction suit, for the purpose of determining the jurisdiction of a federal court, is the value of the right to be protected or the extent of the injury to be prevented by the injunction. If any authority be needed for this proposition a great many are cited in Vol. 1, U. S. Compiled Statutes, 1916, page 574, Note 74.

While it is true that the amount sued for by each individual plaintiff is less than Three Thousand Dollars ($3,000.00) the allegations of the petition, true on demurrer, are that the suits were filed by the several plaintiffs in pursuance of a conspiracy to embarass

and to attempt to ruin appellant, and the case is thus brought within the principle of McDaniel vs. Traylor, 196 U. S. 415. In that case, on page 427, Mr. Justice Harlan said:

> "So far as the bill is concerned, if any one of the specified claims is good against the estate of Hiram Evans, then all are good; if the lands in question, or any interest in them, can be sold to pay one claim, they must be sold to pay all * * * *. The essence of the suit is the alleged fraudulent combination and conspiracy to fasten upon that estate a liability for debts of John Evans, which were held by the defendants and which they, acting in combination, procured, in cooperation with James Evans, to be allowed as claims against the estate of Hiram Evans. By reason of that combination, resulting in the allowance of all those claims in the Probate Court, as expenses of administering the estate of Hiram Evans, the defendants have so tied their respective claims together as to make them, so far as the plaintiffs and the relief sought by them are concerned, *one* claim. The validity of all the claims depends upon the same facts * * * *. A comprehensive decree by which the plaintiff can be protected against those orders will avoid a multiplicity of suits, save great expense and do justice."

The injury sought to be prevented in this case is the harassment and expense of trying twenty-five

(25) separate but identical suits. This being true, the amount involved is not the amount of any one suit, but the aggregate expense and risk of the entire litigation:

Virginia Carolina-Chemical Company vs. Home Insurance Company (supra).

Montgomery Light and Power Company vs. Charles, et al (supra).

Commodores Point Terminal Company vs. Hudnall, et al (supra).

L. & N. R. Co. vs. Smith, 128 Fed. 1.

Of the authorities cited by His Honor, Judge Atwell in support of his position that the jurisdictional amount is not present in this case, the case of Robinson vs. Wemmer, et al, 253 Fed. 790, is clearly not in point, for the reason that in that case each plaintiff had sued on a separate misrepresentation made to him and hence there was no common question of fact, and the petition did not present a proper case for the avoidance of a multiplicity of suits.

The other cases cited are tax cases in which the question of the avoidance of a multiplicity of suits does not even seem to have been discussed. The question was discussed simply as a matter of several different plaintiffs, each having a claim involving

less than the federal jurisdictional amount, attempting to join their suits for the purpose of making the requisite jurisdictional amount. While in our opinion each of these cases could probably have been presented to the court as a proper case for the avoidance of a multiplicity of suits, apparently this was not done, and without this feature to connect them up there was, of course, no ground for the jurisdiction. As suggested in 1 Pomeroy, Section 270 the courts have frequently taken an attitude against the enjoining of the collection of a governmental tax on the grounds of public policy. We agree with Pomeroy in his conclusions on the matter, but in any event these cases are not binding authorities in the case at bar, which presents a clear case of multiplicity of suits, free from any consideration of public policy, and in which the injury sought to be averted is alleged to be and is in excess of the jurisdictional amount.

In our humble opinion none of the authorities cited by Judge Atwell in support of his position that the relief sought in this case would constitute a violation of Section 265 of the Judicial Code presented a case for the exercise of federal jurisdiction, regardless of Section 265 of the Judicial Code, with

the exception of T. & P. vs. Kuteman, 54 Fed. 547. In that case the petition presented a case in which the federal court should have taken and did take jurisdiction to protect the plaintiff from a multiplicity of actions. Having taken jurisdiction it should have given complete relief, whether the suits with which the plaintiff was being harassed were suits in the federal court or in the state court. The question presented to it was a new and distinct cause of action, not present in any of the suits before the state court, and of which it had jurisdiction; and having jurisdiction, it necessarily had authority to enforce that jurisdiction under the provisions of Section 262 of the Judicial Code, just as fully as it would have had jurisdiction to enjoin the enforcement by defendant of judgments fraudulently obtained by him in the state court. This aspect of the matter is not discussed by the court and in view of the trivialty of the suits allowed to continue, was probably not urged by the plaintiff very strongly. While the case was probably binding on the district court below in this case, it is not binding on this Honorable Court and we submit that on principle, it is wrong. Of course, incidentally, the case is authority for the proposition that the requisite amount for federal jurisdiction is present, when, as here, the in-

jury sought to be averted is of an amount in excess of Three Thousand Dollars ($3,000.00), regardless of the amount involved in each of the individual suits sought to be enjoined.

The only matter passed upon by the court below, and hence the only matter involved in this appeal, is the question of whether the court below, as a federal court, had jurisdiction of the cause of action presented by plaintiff's petition. While no formal certificate has been filed in the record, the opinion of the district judge is in effect a certificate and from the record of the case it is apparent that this was the only question passed upon. Under the decisions this is sufficient: Petri vs. Creelman Lumber Co., 199 U. S. 487-492.

For the reasons stated we submit that appellant's petition presented a cause of action for relief against the vexation and harassment of a multiplicity of suits; that the injury threatened and sought to be averted exceeded in amount the sum of Three Thousand Dollars ($3,000.00); that the cause of action presented was separate and distinct from any cause then pending before the state court and presented a proper case for the court in question to assume jurisdiction; and that this being the case, the

federal court had jurisdiction to give the plaintiff complete relief, whether that necessitated enjoining the defendants from further prosecution of suits pending in the federal court or in the state court.

Respectfully submitted,

D. E. BRADSHAW,
T. D. GRESHAM,
J. HART WILLIS,

GRESHAM, WILLIS & FREEMAN,
of Counsel.

SOVEREIGN CAMP WOODMEN OF THE WORLD *v.* O'NEILL ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

No. 58. Submitted October 9, 1924.—Decided November 17, 1924.

1. A decree of the District Court dismissing a bill upon the specific ground of want of jurisdiction is appealable directly to this Court under Jud. Code, § 238. P. 295.
2. It is a settled general rule that, in a suit based on diversity of citizenship brought against several defendants to enjoin the collection of claims against the plaintiff which are separate and distinct although depending for their validity upon a common origin, the test of jurisdiction is the amount of each separate claim, and not their aggregate amount. P. 295.
3. But there is an exception to this rule, where the bill alleges, not only that the defendants' claims are baseless, but that they originated and are being prosecuted in pursuance of a conspiracy to embarrass and attempt to ruin the plaintiff, the amounts of the particular claims not being disputed and the validity of all depending on the same issue. P. 295.
4. In such case, the conspiracy partakes of the nature of a fraudulent conspiracy, and ties together the several claims as one claim for jurisdictional purposes, making their aggregate amount the value of the matter in controversy. P. 297. *McDaniel* v. *Traylor*, 196 U. S. 415; 212 U. S. 428.
5. The objection that relief by injunction sought against proceedings in a state court is prohibited by Jud. Code, § 265, goes to the equity of the particular bill and not to the federal court's jurisdiction of the suit. P. 298. *Smith* v. *Apple*, 264 U. S. 274.

286 Fed. 734, reversed.

APPEAL from a decree of the District Court which dismissed, for want of jurisdiction, a bill to enjoin the defendants from prosecuting separate actions for damages in a state court and from endeavoring to collect money from the plaintiff in any other manner by reason of the matters alleged.

Mr. T. D. Gresham for appellant. *Mr. D. E. Bradshaw* and *Mr. J. Hart Willis* were also on the brief.

The following cases were cited: *Marshall* v. *Holmes*, 141 U. S. 589; *National Surety Co.* v. *State Bank*, 120 Fed. 593; *Wells Fargo & Co.* v. *Taylor*, 254 U. S. 175; *Supreme Lodge* v. *Ray*, 166 S. W. 46; 1 Pomeroy Eq. Jur., 3d ed., § 269, p. 445; *Virginia-Carolina Chemical Co.* v. *Home Ins. Co.*, 113 Fed. 1; *Montgomery Light & Power Co.* v. *Charles*, 258 Fed. 723; *Commodores Point Terminal Co.* v. *Hudnall*, 283 Fed. 150; *McDaniel* v. *Traylor*, 196 U. S. 415; *Louisville & Nashville R. R. Co.* v. *Smith*, 128 Fed. 1; *Robinson* v. *Wemmer*, 253 Fed. 790; *Texas & Pacific Ry. Co.* v. *Kuteman*, 54 Fed. 547; *Petri* v. *Creelman Lumber Co.*, 199 U. S. 487.

No appearance for appellees.

MR. JUSTICE SANFORD delivered the opinion of the Court.

This is a suit in equity brought in the District Court by the Sovereign Camp Woodmen of the World, a fraternal society organized under the laws of Nebraska, against twenty-five of its members, all citizens of Texas. Federal jurisdiction was based upon the diversity of citizenship, and the matter in controversy, which, it was averred, exceeded, exclusive of interest and costs, the sum or value of three thousand dollars. Jud. Code, § 24, subd. 1.

The bill alleged, in substance, that the defendants had entered into an agreement and conspiracy to embarrass and attempt to ruin the Society; that pursuant to this agreement and conspiracy they endeavored at a meeting of the Head Camp of Texas to secure their election as delegates to a session of the Sovereign Camp at New York; that they were defeated and other persons were duly elected and certified to the Sovereign Camp; that

they contested the election and appealed to the Sovereign Camp, which decided that they had not been elected and were not entitled to be recognized as delegates or to any privileges or perquisites as such, and seated the delegates certified by the Head Camp; that under the constitution and by-laws of the Society this decision was final; that nevertheless, acting in concert and pursuant to their joint agreement and conspiracy, they had brought twenty-five separate actions at law against the Society in a local court of Texas to recover amounts ranging from $987.00 to $1,170.00, which they severally claimed as per diem and mileage allowances and traveling expenses by reason of attending the Sovereign Camp as delegates;[1] that in each of these suits the same cause of action was alleged, in identical language, and only one issue was involved in all of them;[2] that there was no merit in the cause of action set up by the defendants and the suits were wholly without any foundation; that if the Society were compelled to defend each of these separate suits, it would be subjected to an enormous expense; and that its remedy at law was inadequate: wherefore it prayed that the defendants be enjoined from prosecuting their separate suits in the state court or endeavoring to collect in any other manner

[1] The bill also alleged that one of the defendants in pursuance of the conspiracy originally brought suit in the state court against the Society for $28,882, alleging that the other defendants had transferred their claims to him, but that, upon notice of a petition for removal of the suit to the federal court, he had amended his original petition by striking out the averment of such assignments and limiting his claim to the amount claimed to be due him individually; and that thereafter the other defendants had brought their separate suits in the state court.

[2] It appears from the averments of the bill that the contention of the defendants was that by a secret exchange of ballot boxes forged and fraudulent votes were substituted for the true votes, and that they were elected at the original meeting after a minority of the delegates to the Head Camp had withdrawn to hold a pretended separate meeting.

any sums of money from the Society by reason of the matters alleged.

The District Court, on motion of the defendants, dismissed the bill on the ground that the court was "without jurisdiction" thereof; being of opinion that as jurisdiction was based on diversity of citizenship, the requisite jurisdictional amount was not present, since each of the defendants claimed in his suit in the state court an amount less than $3,000, and that § 265 of the Judicial Code also deprived the court of jurisdiction. 286 Fed. 734.

As the bill was dismissed upon the specific ground of want of jurisdiction, the direct appeal to this Court was properly allowed. Jud. Code, § 238; *Smith* v. *Apple*, 264 U. S. 274, 277.

1. It is the settled general rule, frequently applied by this Court in tax cases, that in a suit based on diversity of citizenship brought against several defendants to enjoin the collection of claims against the plaintiff which are separate and distinct—although depending for their validity upon a common origin—the test of jurisdiction is the amount of each separate claim, and not their aggregate amount. *Walter* v. *Northeastern Railroad*, 147 U. S. 370, 372; *Northern Pacific Railroad* v. *Walker*, 148 U. S. 391, 392; *Fishback* v. *Western Union Telegraph Co.*, 161 U. S. 96, 100; *Citizens' Bank* v. *Cannon*, 164 U. S. 319, 322. An exception to this general rule was, however, recognized in *McDaniel* v. *Traylor*, 196 U. S. 415, 427. There the heirs of one Hiram Evans, an intestate, brought suit in the circuit court against several defendants to enjoin the enforcement of claims that had been allowed as liens upon his real estate by orders of a probate court. Each claim was less than the requisite jurisdictional amount, but their aggregate exceeded that sum. The bill alleged that these claims were not debts of the intestate, but that the defendants had conspired and confederated with the ad-

ministrator to secure their payment out of the estate, and that the orders allowing them had been procured as the result of the conspiracy and the fraud practiced in pursuance thereof. This Court reversed a decree of the circuit court dismissing the bill, on demurrer, for want of jurisdiction, and held that, on the face of the bill, the value of the matter in dispute was "the aggregate amount of the claims fraudulently procured by the defendants acting in combination to be allowed in the Probate Court as claims against the estate." In the opinion, after referring to the class of cases to which *Walter* v. *Northeastern Railroad* belonged, the Court said: "The case before us, however, is presented by the bill in an entirely different aspect. The case may be regarded as exceptional in its facts, and may be disposed of without affecting former decisions. There is no dispute as to the amount of any particular claim. So far as the bill is concerned, if any one of the specified claims is good against the estate of Hiram Evans, then all are good . . . The matter in dispute is whether the lands . . . can be sold to pay *all* the claims, *in the aggregate*, which the defendants, by *combination and conspiracy*, procured the Probate Court to allow against the estate of Hiram Evans. The essence of the suit is the alleged fraudulent combination and conspiracy to fasten upon that estate a liability for debts of John Evans, which were held by the defendants and which they, acting in combination, procured, in coöperation with James Evans, to be allowed as claims against the estate of Hiram Evans. By reason of that combination, resulting in the allowance of all those claims in the Probate Court, as expenses of administering the estate of Hiram Evans, the defendants have so tied their respective claims together as to make them, so far as the plaintiffs and the relief sought by them are concerned, *one* claim. The validity of all the claims depends upon the same facts. The lien on the lands which is asserted by each defendant

has its origin as well in the combination to which all were parties as in the orders of the Probate Court which, in furtherance of that combination, were procured by their joint action."

And in *McDaniel* v. *Traylor*, 212 U. S. 428, 433—on a second appeal—in affirming a decree of the circuit court, made on return of the case, again dismissing the suit for want of jurisdiction, upon a finding that the allegation that the defendants had conspired in procuring the allowance of the claims, had not been established,[3] it was said: "As we have already seen, it was the fraudulent combination and conspiracy which united the claims and made the aggregate of the claims the matter in dispute. By reason of that combination we decided the claims were 'so tied' together as to make them, 'so far as the plaintiffs and the relief sought by them are concerned, *one* claim.'"

We find that under the allegations of the present bill the case comes fairly within the reason of the exception recognized in the *McDaniel Cases*. It is not only alleged that the defendants' claims are without foundation, but that they originated and are being prosecuted in the state court in pursuance of an agreement and conspiracy to embarass and attempt to ruin the Society. There is no dispute as to the amount of any particular claim; and the validity of all of them depends upon the same issue. A conspiracy to prosecute, by concert of action, numerous baseless claims against the same person for the wrongful purpose of harassing and ruining him, partakes of the nature of a fraudulent conspiracy; and in a suit to enjoin

[3] On the first appeal this Court had said (p. 428): "If the plaintiffs do not prove such a combination and conspiracy, in respect, at least, of so many of the specified claims as in the aggregate will be of the required amount, then their suit must fail for want of jurisdiction in the Circuit Court; for, in the absence of the alleged combination, the claim of each defendant must, according to our decisions, be regarded, for purposes of jurisdiction, as separate from all the others."

them from being separately prosecuted, it must likewise be deemed to tie together such several claims as one claim for jurisdictional purposes, making their aggregate amount the value of the matter in controversy. We conclude, therefore, that, on the face of the bill, the District Court had jurisdiction of the suit by reason of the diversity of citizenship and the amount in controversy.

2. The jurisdiction thus acquired was not taken away by § 265 of the Judicial Code, providing that, except in bankruptcy cases, "the writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State." This section does not deprive a district court of the jurisdiction otherwise conferred by the federal statutes, but merely goes to the question of equity in the particular bill; making it the duty of the court, in the exercise of its jurisdiction, to determine whether the specific case presented is one in which relief by injunction is prohibited by this section or may nevertheless be granted. *Smith* v. *Apple, supra*, p. 278.

The decree is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed and remanded.